

GUTTER CHAVES JOSEPHER RUBIN FORMAN FLEISHER P.A.

TAX AND BUSINESS UPDATE

December 26, 2011

An Electronic Newsletter of Gutter Chaves Josepher Rubin
Forman Fleisher P.A.

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CONTENTS

1. PENALTIES ON UNREPORTED FOREIGN TRUSTS MUST BE PAID IN FULL TO OBTAIN DISTRICT COURT OR CLAIMS COURT JURISDICTION
2. FORM 8938 FOREIGN FINANCIAL ASSET DISCLOSURES – THE WHO, WHAT & HOW, INCLUDING COMPLIANCE TRAPS AND TIPS - COMPLEMENTARY SOUTH FLORIDA PRESENTATION
3. RETURN PREPARERS FACE STRICTER DUE DILIGENCE ON EARNED INCOME CREDIT RETURNS
4. APPLICABLE FEDERAL RATES–JANUARY 2012
5. TIME TO RENEW PTIN'S
6. FIRM ANNOUNCEMENTS

1. PENALTIES ON UNREPORTED FOREIGN TRUSTS MUST BE PAID IN FULL TO OBTAIN DISTRICT COURT OR CLAIMS COURT JURISDICTION

Taxpayers that desire to contest an IRS assertion of tax liability in Federal district court or the Court of Federal Claims must first FULLY pay the asserted tax liability, and then sue for a refund. If the liability is high enough, a taxpayer may be unable to afford to do this.

ABOUT OUR FIRM

We are a boutique law firm that seeks to protect and enhance the individual, family and business wealth of our clients in the following principal practice areas:
Planning to Minimize Taxes (U.S. & International) - Probate & Trust Litigation - Estate Planning, Charitable, Marital & Succession Planning - Business Structuring & Transactions - Trusts & Estates Administration - Tax Controversies - Creditor Protection.

However, under the “divisible tax” analysis, some tax penalties may be divisible from others – when that analysis applies, the taxpayer can only pay some and not all of them, and still get to court by suing for a refund. In a recent Chief Counsel Advice, the issue was raised whether Code § 6048 penalties failures to report contributions to, ownership of, and distributions from foreign trusts are “divisible taxes” that would allow for less than all asserted penalties to be paid and still allow a refund suit.

At first, such penalties would appear to be divisible, since different penalties arise under Code § 6048 for different types of failures to report, and because multiple tax years may be involved. Nonetheless, the IRS concluded that Code § 6048 penalties are NOT divisible. Thus, taxpayers seeking to get to district court or the Claims Court will need to first prepay all asserted penalties in full.

The theory of the CCA was that if payment of only one portion of the penalty was sufficient for jurisdiction, the court nonetheless would have full jurisdiction of all the asserted penalties. Further, different reasonable cause defenses against different portions of the penalty could be argued by the taxpayer. The CCA concluded that this was inconsistent with the theory of a “divisible tax,” and thus partial payment would not give rise the sought after jurisdiction.

There are two important provisos to this determination. First, this is only the IRS' position, and thus a taxpayer could contest that determination in court. Second, the CCA notes that if the taxpayer is willing to drop its opposition to the unpaid tax portion, it could proceed to obtain court jurisdiction over a portion of the penalties asserted by paying just those penalties first.

Chief Counsel Advice 201150029

2. FORM 8938 FOREIGN FINANCIAL ASSET DISCLOSURES – THE WHO, WHAT & HOW, INCLUDING COMPLIANCE TRAPS AND TIPS - COMPLEMENTARY SOUTH FLORIDA PRESENTATION

The IRS recently released Form 8938 and temporary regulations, relating to the reporting of foreign accounts and investment assets of U.S. persons. This Form will be due with the 2011 tax year returns of U.S. persons.

MORE ABOUT OUR FIRM

The firm and its attorneys have been recognized in numerous peer rating guides, such as U.S. News & World Report law firm rankings, Best Lawyers, Martindale-Hubbell, Chambers, Who's Who in American Law, Florida Trend's Legal Elite, Superlawyers, and South Florida Legal Guide Top Lawyers.

The new reporting rules are detailed, and return preparers may have to make judgment calls as to which items to report.

To assist South Florida return preparers in getting on top of the new rules in time for the tax preparation season, we will be holding a complementary small group presentation at our Boca Raton office on several Fridays in January on the above topic.

The invite for the seminars is attached as the last page of this newsletter, or it can be downloaded at <http://db.tt/yYvHrbaw>. It contains the dates and times and RSVP information. Since space is limited, please call or email (the instructions are on the invite) as soon as practicable to reserve a space if you are interested.

3. RETURN PREPARERS FACE STRICTER DUE DILIGENCE ON EARNED INCOME CREDIT RETURNS

The earned income credit (EIC) can provide tax refunds to qualified low income taxpayers. Due to faulty submissions (intentional or unintentional), efforts have escalated over the years to pressure preparers to limit filings to eligible cases only – that is, to get preparers to police this area. For example, in 1997 a penalty of \$100 was added for preparers who fail to comply with due diligence requirements in determining eligibility for the EIC.

More recent changes to the law and regulations have ramped up the compliance burden. For example, earlier this year, the preparer penalty was increased to \$500 (Code §6695(g)). Now, the IRS has issued proposed and final Regulations that affect this area.

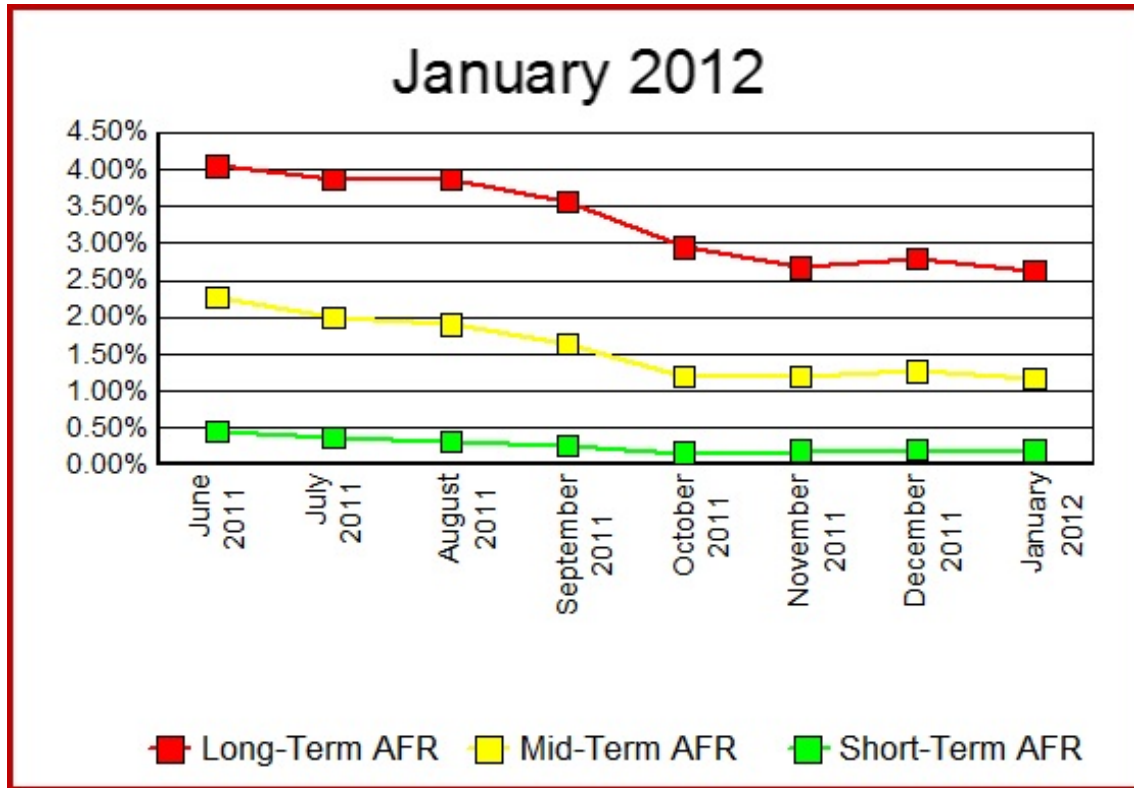
Previously to avoid the penalty, a preparer had to prepare an Eligibility Checklist (Form 8867) and a Computation Worksheet, and retain them for three years. Under proposed Regulations that were issued on December 19, the Form 8867 would now be required to be submitted with the filed tax return. The three year retention period may also be extended in some circumstances under the proposed Regulations, and other changes have been made under both the proposed and final regulations.

Preparers that prepare EIC claims should review the new Regulations to minimize their exposure to the increased preparer penalty.

T.D. 9570, 12/19/2011, Reg. § 1.6695-2

4. APPLICABLE FEDERAL RATES-JANUARY 2012

APPLICABLE FEDERAL RATES	
Annual Compounding	
Short-Term AFR	
June 2011	0.46%
July 2011	0.37%
August 2011	0.32%
September 2011	0.26%
October 2011	0.16%
November 2011	0.19%
December 2011	0.20%
January 2012	0.19%
Mid-Term AFR	
June 2011	2.27%
July 2011	2.00%
August 2011	1.90%
September 2011	1.63%
October 2011	1.19%
November 2011	1.20%
December 2011	1.27%
January 2012	1.17%
Long-Term AFR	
June 2011	4.05%
July 2011	3.86%
August 2011	3.86%
September 2011	3.57%
October 2011	2.95%
November 2011	2.67%
December 2011	2.80%
January 2012	2.63%



5. TIME TO RENEW PTIN'S

In an effort to stake out its own piece of the regulatory State, the IRS now requires return preparers to register with them and obtain a Preparer Tax Identification Number (PTIN), for returns filed after 12/31/10. For preparers with PTINs, the first renewal date is now coming up.

PTIN holders will need to go online to <http://www.irs.gov/ptin> to renew before December 31, 2011. PTIN holders will have to pay \$63 for the privilege of being regulated.

For more information on the PTIN requirements and how to renew, consult IRS News Release 2011-119.

IR 2011-119

6. FIRM ANNOUNCEMENTS

Our attorneys are available for speaking engagements at Bar, accountant, and other professional organization meetings and seminars (schedules permitting). Feel free to contact us with any requests.

Happy holidays to all our readers!

DAILY TAX AND BUSINESS UPDATES AVAILABLE. View prior articles, updates that we didn't have room for in this newsletter, or read the above postings when they are first published, by visiting <http://www.rubinontax.blogspot.com>. To read this issue, or past issues, online, visit <http://www.floridatax.com/Resources.html> (and scroll to the bottom of the page).

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Feel free to forward this newsletter on to anyone who you think may be interested.

The Usual Disclaimer: This newsletter summarizes for informational purposes only information of interest to the clients and friends of Gutter Chaves Josepher Rubin Forman Fleisher P.A. The information is condensed from, and a general summary of, legislation, court decisions, administrative rulings and other information, and should not be construed as legal advice or opinion, and is not a substitute for the advice of counsel.

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COMPLIMENTARY PRESENTATION!

FORM 8938 FOREIGN FINANCIAL ASSET DISCLOSURES - THE WHO, WHAT & HOW, INCLUDING COMPLIANCE TRAPS AND TIPS

A half-hour small group presentation, addressing the recent form and regulations, to assist in understanding and complying with the new reporting rules that are applicable to 2011 income tax return filings.

- For who?** Accountants, attorneys, return preparers, bank, brokerage & trust officers and compliance personnel, and other interested persons
- Presented by:** Charles (Chuck) Rubin, Esq.
- When:** January 6, 13, 20, and 27, 2012 at 8 a.m. (subject to additional dates being added depending on interest)
- Where:** The offices of Gutter Chaves Josepher Rubin Forman Fleisher P.A. 2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431.
- RSVP Required:** Please call or email Susana at 561-998-7847 or sibanez@floridatax.com with preferred date. Group size on each date is limited.